

D.T.E. 02-29-9

Complaint filed by Joseph Donnelly, pursuant to G.L. c. 93, § 108 et seq., with the Department of Telecommunications and Energy claiming America's Digital Satellite Telephone switched his regional and long-distance telephone service without authorization.

APPEARANCES: Joseph Donnelly
70 Bardin Street
Hanover, MA 02339
Complainant

Yanilu Rondon
Manager, Regulatory Affairs Department
America's Digital Satellite Telephone
500 North Rainbow Boulevard
Suite 300
Las Vegas, NV 89107
Respondent

I. INTRODUCTION

On May 22, 2002, Joseph Donnelly (“Complainant”), pursuant to G.L. c. 93, § 108 et seq., filed a complaint with the Department of Telecommunications and Energy (“Department”) alleging that his regional and long-distance telecommunications service was switched without authorization to America’s Digital Satellite Telephone (“ADST” or “Company”).¹ On August 14, 2002, pursuant to notice duly issued, the Department conducted an evidentiary hearing. Joseph and Maureen Donnelly testified on behalf of the Complainant. ADST did not appear to contest the Complainant’s allegations.

II. POSITIONS OF THE PARTIES

A. Complainant

The Complainant contends that ADST switched his regional and long-distance telephone service on or about February 28, 2002 (Exh. Consumer-1; Tr. at 24-25). The Complainant submitted his invoices from ADST for long-distance and regional charges incurred from February 28, 2002 through March 23, 2002 (Exhs. Consumer-1; Consumer-2). The Complainant testified that his wife was contacted by an individual claiming to represent a group of plaintiffs in a class action lawsuit being brought against long-distance carriers (Tr. at 12). The Complainant testified that his wife gave her name, address and other information to this individual in order to receive further information about the lawsuit (id.). The Complainant and his wife further testified that at no time did they authorize a change in their regional or

¹ Pursuant to 220 C.M.R. § 13.02, any unauthorized change to a customer’s primary interexchange carrier or local exchange carrier is known as “slamming.”

long-distance telephone service provider (id. at 11, 13, 16, 41, 42). Further, the Complainant testified that for a little over two years he has not had a long-distance service provider, choosing instead to use "10-10-220" (id. at 22).²

The Complainant discovered the alleged slam when he received his phone bill for the period February 15, 2002 through March 14, 2002 (Exh. Consumer-1; Tr. at 22-23). At this time, on or about March 25, 2002, the Complainant contacted ILD Teleservices, the billing agent for ADST (Tr. at 10, 25-27). ILD Teleservices provided the Complainant with a customer service number for ADST (id. at 10). When contacted, ADST informed the Complainant that they had a valid third party verification ("TPV") tape authorizing the switch in service (id. at 10, 27). The Complainant testified that ADST offered a credit of \$117.95, representing a re-rate from ADST's rates for in-state regional billing to ADST's rates for long-distance calls for the period February 28, 2002 through March 4, 2002 (Exh. Consumer-3; Tr. at 28). Following his telephone conversation with ADST, the Complainant contacted Verizon to have his original regional service restored (Tr. at 29).

Additionally, on July 8, 2002, ADST issued a refund check in the amount of \$362.95, representing a re-rate of regional and long-distance calls from March 5, 2002 through March 23, 2002 (Exh. Consumer-4). After listening to the TPV tape at the hearing, the Complainant's wife testified that while the voice on the tape was indeed hers, the questions and representations made on the part of ADST were not the questions and representations made

² "10-10-220" is one of a number of dial-around long-distance telephone services that allow a customer to access a particular long-distance carrier's network from any telephone regardless of whatever carrier may provide long-distance service to that line.

during the original call (Exh. DTE-2; Tr. at 11, 40-42). After receiving the \$117.95 credit and the \$362.95 check from ADST, the bill in dispute totals \$468.53 (Tr. at 32).

B. ADST

ADST failed to appear before the Department to respond to the Complainant's allegations. On July 8, 2002, the Company forwarded to the Department its response to Mr. Donnelly's consumer complaint, stating that the Complainant had been contacted by one of ADST's outside independent sales firms and was offered ADST's services (Exh. Consumer-3). Along with that letter, ADST provided the Department with a copy of the refund check for \$362.95 and a copy of the TPV (Exhs. Consumer-3; DTE-2).

III. STANDARD OF REVIEW

Pursuant to G.L. c. 93, § 109(a), a change in a customer's primary interexchange carrier ("IXC") shall be considered to have been authorized only if the IXC or local exchange carrier ("LEC") that initiated that change provides confirmation that the customer did authorize such change either through a signed Letter of Authorization ("LOA") or oral confirmation of authorization through TPV obtained by a company registered with the Department to provide TPV services in the Commonwealth.

Pursuant to G.L. c. 93, § 110 (i), the Department shall hold a hearing to determine, based on our review of the LOA or TPV and any other information relevant to the change in telephone service, whether the customer did authorize the carrier change.

In addition to the Massachusetts' slamming law set forth above, the Federal Communications Commission ("FCC") implemented new slamming liability rules. Corrected

Version First Order on Reconsideration, CC Docket No. 94-129 (May 3, 2000) (“Corrected Order”). In accordance with those rules the company that switches a customer’s telephone service without authorization must pay the customer’s authorized company a penalty equal to 150 percent of the charges received from the customer. The authorized company is then required to return one third of that amount, or 50 percent of what the customer paid to the unauthorized carrier, to the customer. See 47 C.F.R. § 64.1140. In the Corrected Order the FCC concluded that states should have primary responsibility for administering their slamming liability rules (See ¶¶ 22-28, 33-37, 52, 84). On November 3, 2000, pursuant to 47 C.F.R. § 64.1110, the Department provided to the FCC its State Notification of Election to Administer FCC Rules (See Letter to Magalie Roman Salas, November 3, 2000).

IV. ANALYSIS AND FINDINGS

In accordance with G.L. c. 93, § 110(i) the Department conducted a hearing on August 14, 2002, to determine whether the change in the Complainant’s regional and long-distance carrier was authorized. ADST failed to appear to refute the Complainant’s allegations (Tr. at 4). Thus, the Department finds that ADST switched the Complainant’s regional and long-distance telecommunications services without authorization.

Having found that ADST initiated this unauthorized switch in the Complainant’s regional and long-distance service, and in accordance with the FCC’s Corrected Order, the Department directs ADST to pay Verizon, the Complainant’s authorized regional service provider, 150 percent of the charges it received from the Complainant within 10 days of this Order. Verizon shall remit one third of that amount, or 50 percent of what the Complainant

paid to ADST, to the Complainant. In addition, in accordance with G.L. c. 93, § 112(b), ADST is directed to remit to the Department the amount of one thousand dollars (\$1,000.00) as a penalty for the illegal switch of Mr. Donnelly's regional and long-distance service.³

As a final note, the Department has concerns with the accusations raised in this case regarding the validity of the TPV tape presented at the hearing. In accordance with G.L. c. 159, § 12E and G.L. c. 93, § 109, all TPV service providers shall be registered with the Department, which has the authority to protect consumers against "incorrect, inaccurate or falsified verification." Third party verifiers have an obligation to ensure that tampering and falsifying of data does not occur. Therefore, the Department will continue to review the TPV provided in this case to determine if an investigation into the TPV service provider's business practices are warranted.

V. ORDER

Accordingly, after notice, hearing, consideration, and determination that America's Digital Satellite Telephone switched Joseph Donnelly's regional and long-distance telephone service provider without authorization in violation of the provisions of Massachusetts G.L. c.

³ Pursuant to G.L. c. 93, § 112(b), an IXC or LEC determined by the Department to have switched any customer's IXC or LEC without proper authorization more than once in a 12-month period, shall be subject to a civil penalty not to exceed \$1,000 for the first offense and not less than \$2,000 for any subsequent offense. Prior switching violations for the 12-month period in question have been assessed against ADST in Dion v. ADST, D.T.E. 02-29-8 (2002). Moreover, an IXC determined by the Department to have intentionally, maliciously, or fraudulently switched the service of more than 20 customers in a 12-month period, may be prohibited from selling telecommunications services in the Commonwealth for a period of up to one year. G.L. c. 93, § 112(b).

93, § 109 (a), it is hereby

ORDERED: That America's Digital Satellite Telephone shall comply with the directives contained in this order; and it is

FURTHER ORDERED: That America's Digital Satellite Telephone shall submit to the Department within ten (10) business days of the issuance of this order, an accounting of refunds and credits made to Verizon.

By Order of the Department,

Paul B. Vasington, Chairman

James Connelly, Commissioner

W. Robert Keating, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).